

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

UNITED STATES OF AMERICA

v.

DANIEL FREDRICK AVILES-HAMMAC

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CRIMINAL NO. 6:18-CR-135-ADA

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

TO: THE HONORABLE ALAN D ALBRIGHT,
UNITED STATES DISTRICT JUDGE

The undersigned submits this Report and Recommendation to the district judge pursuant to 28 U.S.C. § 636(b) and Rule 1 of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges. Before the Court is the petition of the United States Probation Office recommending the revocation of the Defendant's term of supervision. The district judge referred the matter to the undersigned for the preparation of a report and recommendation.

I. PROCEDURAL BACKGROUND

The Defendant was convicted of Possession of a Firearm by a Convicted Felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) and Possession with Intent to Distribute at Least 50 Grams of Methamphetamine, A Schedule II Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(viii). The Defendant was released to supervision on November 8, 2022. Defendant appeared before the undersigned on July 9, 2024, for a revocation hearing and pled true to all the violations. ECF No. 48; ECF No. 50. He was continued on

supervised release at that time. ECF No. 48; ECF No. 50.

On October 22, 2024, the United States Probation Office filed a Petition for Warrant or Summons for Offender Under Supervision, alleging the Defendant violated the terms of his supervision and seeking a show-cause hearing as to why the Defendant's supervision should not be revoked. ECF No. 53. The petition alleges the Defendant violated the terms of his supervision in the following instances:

Violation Number 1: The defendant violated mandatory condition Number 3, in that on or about July 23, 2024, the defendant unlawfully used methamphetamine.

Violation Number 2: The defendant violated mandatory condition Number 1, in that on or about October 15, 2024, the defendant possessed a dangerous drug without a valid prescription from a licensed pharmacist, in violation of Texas Health and Safety Code 483.041.

Violation Number 3 The defendant violated mandatory condition Number 1, in that on or about October 15, 2024, the defendant possessed a controlled substance with a chemical structure substantially similar to the chemical structure of a controlled substance listed in Penalty Group 1, in violation of Texas Health and Safety Code 481.106.

Violation Number 4: The defendant violated mandatory condition Number 1, in that on or about October 15, 2024, the defendant knowingly or intentionally possessed a usable quantity of marijuana, in violation of Texas Health and Safety Code 481.121.

At the hearing, Defendant pleaded TRUE as to violation numbers 1 through 4. Additionally, the petition contained a sufficient factual basis to support the violations.

II. FINDINGS OF THE COURT

1. The Defendant violated the conditions of his supervision as alleged in the petition.
2. The Defendant was competent to make the decision to enter a plea to the allegations.
3. The Defendant had both a factual and rational understanding of the proceedings against him.

4. The Defendant did not suffer from any physical or mental impairment that would affect his ability to fully understand the charges against him or the consequences of his plea.
5. The Defendant has not had any injury that would affect his judgment in entering a plea or that would affect his understanding of the basis, consequences, or effect of his plea.
6. The Defendant was sane and mentally competent to stand trial for these proceedings.
7. The Defendant was sane and mentally competent to assist his attorney in the preparation and conduct of his defense.
8. The Defendant received a copy of the petition naming him, and he either read it or had it read to him.
9. The Defendant understood the petition and the charges alleged against him and had the opportunity to discuss the petition and charges with his attorney.
10. The Defendant understood that he had the right to present evidence and to cross-examine witnesses at the hearing.
11. The Defendant freely, intelligently, and voluntarily entered his plea to the allegations.
12. The Defendant understood his statutory and constitutional rights and desired to waive them.

III. RECOMMENDATION

The undersigned has carefully considered all the arguments and evidence presented by the parties and **RECOMMENDS** that the Defendant's supervised release be revoked and that he be sentenced to 14 months imprisonment, with credit for time served, and no term of supervised release to follow.

IV. WARNINGS

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The district court need not consider frivolous, conclusive, or general objections. *See Battles v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the district judge of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the district judge. *See* 28 U.S.C. 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED this 13th day of November, 2024.



DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE